

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

OUTMEMPHIS, et al.,

Plaintiffs,

v.

BILL LEE, et al.,

Defendants.

Civil Action No. 2:23-CV-2670

Civil Action No. 2:24-CV-2101

Chief Judge Lipman

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF TENNESSEE, et al.,

Defendants.

Plaintiffs' Response to Defendants' Notice of Supplemental Authority

Plaintiffs write in response to Defendants' Notice of Supplemental Authority, ECF No. 117, calling the Court's attention to the Sixth Circuit's recent decision in *Tennessee Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Lee*, No. 24-5546, 2024 WL 3219054 (6th Cir. June 28, 2024). Contrary to Defendants' notice, nothing in the decision supports dismissal of OUTMemphis for lack of standing.

The Sixth Circuit in *Tenn. Conf. of NAACP* narrowly held that the organizational plaintiff "likely fail[ed] to identify specific facts, as opposed to general allegations" to establish

organizational standing at the summary judgment stage. 2024 WL 3219054, at *15 (6th Cir. June 28, 2024). At summary judgment, a plaintiff must “prove that it *actually* had standing,” and courts may grant summary judgment against organizations that “fail[] to back up their diversion-of-resources allegations with adequate proof.” *Id.* at *13–15. By contrast, when evaluating a motion to dismiss, a court “[a]ccept[s] as true the complaint’s factual allegations” and simply asks whether the plaintiff has asserted a “plausible claim” of standing. *Ass’n of Am. Physicians & Surgeons v. United States Food & Drug Admin.*, 13 F.4th 531, 544 (6th Cir. 2021).

OUTMemphis easily satisfies this lower standard at the current pleading stage, and the fruits of discovery will allow the Court to assess actual standing in due course. *See* ECF No. 67 at 12–18.

Further, Defendants mischaracterize the Sixth Circuit’s interpretation of *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367 (2024) and *Havens Realty Corporation v. Coleman*, 455 U.S. 363 (1982). The Sixth Circuit does not state that *Alliance for Hippocratic Medicine* has “narrowed” *Havens*, *see* ECF No. 117 at 2. Rather, the Sixth Circuit noted that the Supreme Court “approvingly cited . . . many . . . cases in which the Court has allowed ‘unregulated’ parties to sue a defendant,” leaving open the possibility that the NAACP could “perhaps . . . rely on a *Havens*-like standing theory.” *Tenn. Conf. of NAACP*, 2024 WL 3219054, at *14 (noting developments that “have clarified [*Havens*] narrow domain.”). *Tenn. Conf. of NAACP* merely clarified the previous state of the law—that an organization “cannot spend its way into standing simply by expending money to gather information and advocate against the defendant’s actions.” *Id.* (quotation omitted).

As explained in response to Defendants’ previous notice of supplemental authority, OUTMemphis has alleged direct and concrete injuries sufficient to show past, current, and

imminent future injuries, all flowing from enforcement of Tennessee's discriminatory Aggravated Prostitution statute. *See* ECF No. 67 at 13–14.

Dated: July 11, 2024

Respectfully submitted,

/s/ Alexis Alvarez

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Certificate of Service

I hereby certify that a true and exact copy of the foregoing was filed and served via the Court's electronic filing system on this the 11th day of July 2024, upon:

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